

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In The Matter of Request for Review by Access Integration Specialists of Decision of Universal Service Administrator	WC Docket No. 02-60 REQUEST FOR REVIEW AND/OR WAIVER OF DECISION BY UNIVERSAL SERVICE ADMINISTRATOR
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I. INTRODUCTION

This appeal concerns the Universal Service Administrative Company’s (USAC or Administrator) decision to take back funding awarded to Access Integration Specialists (AIS) for its work on the Iowa Rural Health Telecommunications Program’s (IRHTP) project pursuant to the Universal Service Rural Health Care Pilot Program (RHC Pilot Program).¹ In 2009 and 2012, AIS received awards (FRNs 41446 and 63145) to perform Quality Assurance Inspection Services for the project which sought to connect 88 rural hospital sites to Iowa’s existing fiber network. AIS performed those services and the IRHTP project has been, up to this point, an overall success. Now, USAC seeks to recoup the monies paid to AIS for its services based on

¹ HCP Name: Iowa Hospital Association
HCP Number: 17226

alleged violations of FCC's competitive bidding rules. These alleged violations rely on speculation, have no basis in the record and fail to appreciate the actual circumstances involved.

Accordingly, pursuant to 47 C.F.R. §§ 54.719(b) and 55.702(a), AIS seeks *de novo* review of the Administrator's decision and, for the reasons stated herein, respectfully requests that the Wireline Competition Bureau (WCB) reverse this decision, or, in the alternative, grant a waiver pursuant to 47 C.F.R. § 1.3.

II. BACKGROUND

IRHTP was formed in 2010 to "connect willing hospitals and other providers in Iowa and surrounding states to a dedicated broadband fiber network using existing Iowa Communications Network (ICN) infrastructure."² Since the beginning, this project contemplated the use of ICN's network as a "backbone." Indeed, IRHTP's project was unique to the RHC Pilot Program in that Iowa already had a state-owned fiber network that extended to all 99 Iowa counties. Unlike other projects, IRHTP contemplated construction of additional fiber to add to this network, rather than buying leases to accomplish the goals of the Pilot Program.

Anthony Crandell, owner and principal associate of AIS had substantial knowledge of ICN's network. He began working for the State of Iowa in 1978 as a project manager in the Communications Division of General Services. He then continued working in this role for ICN when it was formed in 1994.³ In 2002, Mr. Crandell began doing project management work and RFP drafting for other entities.⁴ In 2006, his business, Access Integration Specialists (AIS) entered into a three-year contract with ICN to perform project management services as needed

² See Iowa Rural Health Telecommunications Program Network Plan (Oct. 2013), *available at* http://www.usac.org/_res/documents/rhc/pdf/tools/HCF-Posted-Services/17226_NetworkPlan-01.pdf (Attachment A).

³ See Affidavit of Tony Crandell at ¶ 5, 6 (Attachment B).

⁴ See Affidavit of Tony Crandell at ¶ 7, 8.

and requested as an independent contractor.⁵ Art Spies, Project Coordinator for IRHTP, recognized Mr. Crandell's specialized skill-set and experience, and requested his assistance with drafting the RFPs for the RHC Pilot Program funding awarded to IRHTP in 2008.⁶ Mr. Crandell agreed. Contrary to the Administrator's decision, Mr. Crandell was not in charge of "implementing and executing the IRHTP."⁷ This was Mr. Spies's role as the Project Coordinator, as well as the Steering Committee's role. Mr. Crandell was not a part of the Steering Committee and only served as a resource to IRHTP based on his technical expertise.

One of the RFPs Mr. Crandell assisted in drafting for IRHTP was RFP 08-001.⁸ This RFP included two parts – one for outside plant fiber installation (Part I) and the other for quality assurance inspection services (Part II), including overseeing and monitoring the installation of the fiber optic facilities being procured under Part I. Vendors could not be awarded both parts.⁹

RFP 08-001 was posted on August 1, 2008.¹⁰ The Quality Assurance Inspection Services section (Part II) required vendors to submit "one firm fixed price for the oversight inspection of the[] 94 sites over a three-year period."¹¹ The firm fixed price had to include the fee, travel, lodging, meals, communications, office supplies, and other specific requirements to do the job.

⁵ See Affidavit of Tony Crandell at ¶ 9.

⁶ IRHTP was awarded approximately \$9.95 million under the Rural Health Care Pilot Program. *See In the Matter of Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, FCC 07-198, 22 FCC Rcd 20360 (2007) (Pilot Program Selection Order) at Appendix B (providing maximum support amounts of \$3,316,320.18 per year for 3 years) (Attachment C). This award was made public.

⁷ See Administrator's Decision on Rural Health Care Program Appeal (Jan. 27, 2016) (hereinafter Administrator's Decision) at 2, 3, 5 (Attachment D).

⁸ See RFP 08-001 (Attachment E).

⁹ See RFP 08-001 at 3 ("Vendors may submit proposals for both Parts One and Two. However, a Vendor cannot be awarded both Parts. A Vendor submitting a bid for Part II, will not be awarded a contract if the Vendor has any business relationship with the Vendor awarded Part I of this RFP.").

¹⁰ RFP 08-002 was also issued around this time with bid proposals due on September 5, 2008.

¹¹ See RFP 08-001 at 19-20.

The bid response had to contain the total three year costs and expenses. A Vendors Conference was held on August 12, 2008 and proposals were due by September 12, 2008.

IRHTP's steering committee met on November 12, 2008, to review the bid proposals for RFPs 08-001 and 08-002.¹² Mr. Crandell was present at this meeting as "staff" to answer any technical questions the Committee had.¹³ RFP 08-001 received 16 bids for fiber installation (Part I) and 2 bids for Quality Assurance Inspection Services (Part II). RFP 08-002 received 12 bids. Awards were made for the fiber installation and RFP 08-002.¹⁴ The bids received for Quality Assurance were \$2.3 million by AT&T and \$1.3 million by Adesta. The Committee rejected these bids outright as they exceeded the remaining budget. The November 12, 2008 minutes do not suggest other aspects of the budget were discussed, such as the amount of the remaining budget or what percentage had been designated toward Quality Assurance Inspection Services. Because the bids were over budget, the Committee then discussed ways to reduce the cost of quality assurance services. They concluded that constant supervision was not necessary based on various factors and that periodic supervision would be sufficient.¹⁵ Therefore, the Committee declined to issue an award on Part II and decided to issue a separate RFP instead.

Shortly thereafter, Mr. Crandell inquired whether AIS would be eligible to bid on the second RFP.¹⁶ Mr. Spies discussed this with IRHTP's USAC coach, Barbara Sheldon. Ms. Sheldon informed Mr. Spies that it would not be a problem as long as Mr. Crandell did not assist in drafting that specific RFP. Mr. Crandell, therefore, did not assist with drafting RFP 09-002,

¹² See IRHTP Steering Committee Minutes of November 12, 2008 (Attachment F).

¹³ See *id.*

¹⁴ Notably, one of the awards for Part I went to Adesta, making it ineligible for a Part II award. See RFP 08-001 at 3.

¹⁵ See IRHTP Steering Committee Minutes of November 12, 2008.

¹⁶ See Affidavit of Tony Crandell at ¶ 20.

the second Quality Assurance Inspection Services RFP.¹⁷ Spies and IRHTP relied on Ms. Sheldon's representation in informing Mr. Crandell that AIS could bid on the subsequent Quality Assurance Inspection Services RFP.

RFP 09-002 was posted on July 8, 2009. The RFP noted that RFP 08-001 was available upon request.¹⁸ RFP 09-002 was different from RFP 08-001 in the following aspects:

- Describing the quality assurance inspection services as supplemental or "spot-checking," problem resolution, site coordination and completing the link-segment checklists rather than "continuous over sight at each construction location any time the contractor is working on site."¹⁹
- Providing the exact number and locations of the sites requiring quality assurance inspection services.
- Using a burdened hourly rate approach (number of sites x hours x "burdened hourly rate") to get the total three-year firm fixed cost.²⁰

Specifically, the submittal forms differed as follows:

RFP 08-001, Attachment 4-Part II	RFP 09-002, Annex A
<p>The Vendor providing the Quality Assurance Inspection Services shall submit one firm fixed price for the quality control oversight inspection services of the 94 sites as shown in Chapter III, Annex A & D of this IRHTP RFP 08-001; Various sites will be installed over a three-year period ending Dec 31, 2011. For the purpose of this response, the vendor shall assume all 94 sites will be built. In the event sites are added or dropped, IRHTP will negotiate adjustments with the winning vendor.</p> <p>The firm fixed price must include not only the firm fixed fee, but all costs such as, but not limited to: travel, lodging, meals, communications, office supplies, and other specific resources to do the job.</p>	<p><u>Costing Model One – Sixty Six (66) Constructed Sites</u></p> <p>Coordination meetings, problem resolution and resolution of administrative issues on site. 8 hours</p> <p>Site Construction Quality Assurance Spot-Checking 8 hours</p> <p>Completion of Final Link-Segment Checklist with contractor and the HCP representative. (May require dedicated travel) 8 hours</p> <p>Re-inspection for release of retainage and the completion of the final site checklist (May require dedicated travel)</p>

¹⁷ See Affidavit of Tony Crandell at ¶ 20, 21.

¹⁸ See RFP 09-002 at 2 (Attachment G).

¹⁹ Compare RFP 08-001 at 17 with RFP 09-002 at 15.

²⁰ See Annex A to RFP 09-002.

<p>Bid responses containing only an hourly rate “plus expenses” will not be considered by the IRHTP. The bid response must contain the total three year costs and expenses for each site.</p> <p>The undersigned submits this total as our firm fixed price for the Part II Quality Assurance Inspection Services:</p> <p>Total three year costs: \$ _____</p>	<p>8 hours</p> <p>Total Hours per constructed site 32 hours</p> <p>Cost Calculation Sixty six (66) sites times (x) 32 hours times (x) the burdened hourly rate of \$ _____ equals (=) a Total Three-Year Firm Fixed Cost of \$ _____</p> <p><u>Costing Model Two – Nineteen (16) On-Net Sites</u> Completion of Modified Final Link-Segment Checklist with contractor and the HCP representative. 8 hours</p> <p>Cost Calculation Nineteen (19) sites times (x) 8 hours times (x) the burdened hourly rate of \$ _____ equals (=) a Total Three-Year Firm Fixed Cost of \$ _____</p> <p>Total three year firm Fixed Cost (Cost Calculation One + Cost Calculation Two) \$ _____ (This is the evaluated cost)</p> <p>Bid responses containing only an hourly rate “plus expenses” will not be considered by the IRHTP.</p> <p>The undersigned submits the total of \$ _____ as our Total Three-Year Firm Fixed Costs for Quality Assurance Inspection Services</p>
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Two bids were received in response to RFP 09-002. They were scored as follows:

Criterion	Adesta	Access Integration Specialists
Project Experience 15 points	15	13.7
Cost 40 points	35.3	40
Grasp of Project 25 points	25	25
Vendor Capabilities 15 points	14.3	14
Invoicing and Audit 5 points	4.3	5

Total possible 100 points	94	97.7
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Based on FCC rules requiring that IRHTP select the most “cost-effective” service provider,²¹ AIS was awarded the bid.²² AIS bid on a subsequent Quality Assurance RFP 12-004, which was essentially identical to RFP 09-002, except with far fewer sites and hours of work.²³ Mr. Crandell did not help draft the quality assurance services section of that RFP and AIS was the only bidder for it. Notably, AIS submitted the same “burdened hourly rate” for RFP 12-004 as it had for RFP 09-002.²⁴ AIS was awarded the bid for RFP 12-004.

III. PROCEDURAL HISTORY

On December 21, 2009 and July 12, 2012, AIS received Funding Commitment Letters from USAC with regard to his services to be performed in connection with FRNs 41446 and 63145. AIS performed the required work pursuant to these two awards. This was AIS’s largest project since Mr. Crandell had retired in 2002. AIS completed its work in 2012.

Two years later, on September 5, 2014, USAC issued an “Independent Auditor’s Report on Iowa Rural Health Telecommunication Program’s Compliance with Rural Health Care Pilot Program Rules” (USAC Audit).²⁵ With respect to FRNs 41446 and 63145, the USAC Audit determined that because Mr. Crandell was involved with the IRHTP Pilot Project through his

²¹ See Pilot Program Selection Order at ¶ 78 noting that it defines “cost-effective” as “the method that costs the least after consideration of the features, quality of transmission, reliability, and other factors that the health care provider deems relevant to . . . choosing a method of providing the required health care services.”

²² Notably, it is questionable whether Adesta would have even been eligible for RFP 09-002 considering that it was awarded a bid on Part I of RFP 08-001. See RFP 09-002 at 19 (stating “Vendors that received a RFP 08-001 Part I award to install fiber cannot bid or receive an award under this RFP 09-002.”). See also IRHTP Steering Committee Minutes of November 12, 2008 (showing that Adesta received an award for Fiber Build and IRUs).

²³ Because RFP 09-002 and RFP 12-004 were essentially identical, except for the scope of the project, any reference to RFP 09-0002 within this appeal would also apply to AIS’s bid for RFP 12-004.

²⁴ See Affidavit of Art Spies at 2-3 (Attachment H).

²⁵ See Independent Auditor’s Report on Iowa Rural Health Telecommunications Program’s Compliance with Rural Health Care Pilot Program Rules (USAC Audit No. RH2013PP018) (Sept. 5, 2014) (USAC Audit) (Attachment I).

work on various RFPs, his participation in the competitive bidding process for other RFPs violated the competitive bidding requirements, which it enumerated as “criteria 1 to 6,” arising out of various sources.²⁶

²⁶ See USAC Audit at 9 and 26 providing the “Criteria” as such:

1. “To select the telecommunications carriers that will provide services eligible for universal service support to it under this subpart, each eligible health care provider shall participate in a competitive bidding process pursuant to the requirements established in this subpart and any additional and applicable state, local or other procurement requirements.” 47 C.F.R. § 54.603(a) (2008).
2. “Pursuant to section 54.603 and 54.615 of the Commission’s rules, each eligible health care provider must participate in a competitive bidding process and follow any applicable state, local, or other procurement requirements to select the most cost-effective provider of the services eligible for universal service support under the RHC support mechanism.” *In the Matter of Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, FCC 07-198, 22 FCC Rcd 20360, 20412 ¶ 100 (2007) (*Pilot Program Selection Order*).
3. “Consistent with the Joint Board’s recommendation for eligible schools and libraries, we conclude that eligible health care providers shall be required to seek competitive bids for all services eligible for support pursuant to section 254(h) be submitting their bona fide requests for services to the Administrator.” *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96045, Report and Order, FCC 97-157, 12 FCC Rcd 8776, 9133, ¶ 686 (1997) (*1997 Universal Service Order*).
4. “We note that vendors or service providers participating in the competitive bid process are prohibited from assisting with or filling out a selected participants’ FCC Form 465.” *Pilot Program Selection Order*, 22 FCC Rcd at 20405, ¶ 86, n.281.
5. “To further prevent against waste, fraud, and abuse, we require participants to identify, when they submit their Form 465, to USAC and the Commission any consultants, service providers, or other outside experts, whether paid or unpaid, who aided in the preparation of their pilot Program applications Identifying these consultants and outside experts could facilitate the ability of USAC, the Commission, and law enforcement officials to identify and prosecute individuals that may seek to manipulate the competitive bidding process or engage in other illegal acts. To ensure selected participants comply with the competitive bidding requirements, they must disclose all of the types of relationships explained above.” *Pilot Program Selection Order*, 22 FCC Rcd at 20415, ¶ 104.
6. “The competitive bidding rules also ensure that universal service support does not disadvantage one provider over another, or unfairly favor or disfavor one technology over another.” Federal Communications Commission, *Pilot Program: Frequently Asked Questions and Answers*.

On May 6, 2015, AIS received Commitment Adjustment Letters for these FRNs seeking to recoup disbursed funds pursuant to the audit findings.²⁷ These Letters seek recoupment of \$142,290.00 for FRN 41446 and \$8,160.00 for FRN 63145.

On July 6, 2015, AIS and IRHTP timely submitted appeals to USAC to reconsider the audit finding and rescind the Commitment Adjustment Letters. These appeals specifically addressed the audit finding of “service provider involvement in IRHTP’s competitive bidding process.” AIS provided an affidavit from Tony Crandell and IRHTP provided an affidavit from Art Spies to clarify the circumstances surrounding the drafting of the IRHTP RFPs and describe the screening measures implemented to comply with the competitive bidding requirements. The affidavits also addressed IRHTP’s communication with its USAC coach regarding the screening measures and the coach’s representation that there would be no problem with allowing AIS to bid on RFPs 09-002 and 12-004 for Quality Assurance Inspection Services.

On January 27, 2016, the Administrator issued a decision affirming the audit findings. AIS now submits this request for review pursuant to 47 C.F.R. §§ 54.719(b) and 55.720(a) for the WCB to reverse the decision, or in the alternative, grant a waiver pursuant to 47 C.F.R. § 1.3.

IV. THE ADMINISTRATOR’S DECISION

The Administrator determined that IRHTP did not comply with FCC’s competitive bidding rules for the following reasons:

- Mr. Crandell performed work on IRHTP’s first RFP for inspection services giving him access to information that other prospective bidders did not have.

²⁷ See Letter from Rural Health Care Division, USAC, to Tony Crandell/Access Integration Specialists (May 6, 2015) (Attachment J).

- Mr. Crandell worked on IRHTP's other RFPs for outside fiber plant, network and site electronics, broadband lit services, and meshed Ethernet services giving him access to information that other prospective bidders did not have.
- Mr. Crandell's work on these RFPs coupled with his bid on the scaled-back inspection services may have discouraged prospective bidders from bidding.²⁸

These reasons rely on assumptions and speculation that are not supported by the record. Indeed, the record indicates IRHTP implemented appropriate screening procedures and relied on representations from its USAC coach to ensure that it met the competitive bidding requirements. USAC's decision to recoup these funds reflects a misunderstanding of the circumstances and unfairly punishes AIS and its owner, Mr. Crandell, for doing precisely what it was told from USAC itself. As such, AIS requests the WCB reverse the Administrator's decision or, in the alternative, waive the competitive bidding requirements based on the unique circumstances of this project.

V. QUESTIONS PRESENTED

1. Did Tony Crandell's participation in drafting RFPs 08-001, 08-002, 10-001, 12-004 (Outside Plant Fiber and Network Electronics sections only), and 12-005 and bidding on RFPs 09-002 and 12-004 violate FCC's competitive bidding requirements? *No*.
2. Should AIS and IRHTP be granted a waiver of the competitive bidding requirements based on the public interest, their good faith actions, and the unique circumstances of this project? *Yes*.

²⁸ See Administrator's Decision at 2.

VI. ARGUMENT

A. The Administrator's Decision Should be Reversed As the Record Fails to Demonstrate that Crandell's Participation in RFP 08-001 Disadvantaged Other Potential Bidders in RFP 09-002.

The Administrator notes that because of Crandell's work on various IRHTP RFPs, AIS had access to information that other bidders did not. This information allegedly included IRHTP's needs for inspection services, the bids that IRHTP received for its first RFP for inspection services, IRHTP's fiber plant to be inspected, IRHTP's budget, and IRHTP's general competitive and vendor selection processes.²⁹ Each of these will be discussed in turn.

1. The Same Information Was Available to All Bidders on RFP 09-002, and In the Event It Was Not, Such Information Was Immaterial to Bidding on RFP 09-002.

a. IRHTP's Needs for Inspection Services Were Explicit in the RFP Itself.

RFP 09-002 described that 66 constructed sites required 32 hours of work per site and 16 on-net sites required 8 hours of work per site. Bidders were required to provide "burdened hourly rates" for both models and add them together to calculate the total three-year firm fixed cost. Part of the reason for putting together this model was to eliminate many of the unknowns related to the actual schedule of construction and to "provide a level playing field for bid response evaluation."³⁰ All "needs for inspection services" were clearly identified for all bidders. Mr. Crandell enjoyed no alleged "advantage" over any other vendor with respect to knowledge of IRHTP's "needs" for inspection services based on his involvement in helping draft RFP 08-001. This is partly because IRHTP's needs for quality assurance inspection services changed between these two RFPs. RFP 08-001 requested constant supervision, while RFP 09-

²⁹ See Administrator's Decision at 2.

³⁰ See RFP 09-002 at 12.

002 requested periodic supervision or “spot-checking.” These needs were apparent within the RFPs themselves. No other information was necessary or material to submitting a bid for RFP 09-002. The Administrator erred in concluding Mr. Crandell had unique access to this information that could have advantaged AIS over other potential bidders on RFP 09-002.

b. Crandell’s Knowledge of the Amount of the RFP 08-001 Bids Was Irrelevant and Immaterial to Bidding on RFP 09-002.

Mr. Crandell did have knowledge of the amounts of the two bids that IRHTP received for the first RFP for Quality Assurance Inspection Services (Part II of RFP 08-001). However, that is not to say that information was relevant to potential bidders in RFP 09-002 or would have been withheld had it been requested. All potential bidders for RFP 09-002 were aware that this was the second Quality Assurance Inspection Services RFP.³¹ Indeed, RFP 08-001 was available to bidders of RFP 09-002 upon request. Moreover, vendors were explicitly invited to submit written questions and/or requests directly to Art Spies, IRHTP Project Coordinator. IRHTP would then prepare written responses which would be shared with all vendors on the IHA website. The record does not indicate Mr. Spies received questions or requests regarding the previous bid amounts.

Mr. Crandell’s knowledge of the previous bid amounts was of little, if any, consequence. As mentioned above, RFP 09-002 used an entirely different formula for vendors to submit bids. Therefore, the previous bids were out of context and irrelevant to the services contemplated in RFP 09-002, which were re-defined as “spot-checking” rather than constant supervision as contemplated in RFP 08-001. Mr. Crandell’s only unique knowledge was that \$2.3 million and \$1.3 million were outside the budget at the time the proposals were considered. He had no more

³¹ See RFP 09-002 at 12 (“Notice: Part II – Quality Assurance Inspection Services of the aforementioned IRHTP RFP 08-001 is cancelled and is replaced with this IRHTP RFP 09-002”).

specific knowledge regarding what the budget was, how much was remaining, or how much had been designated towards Quality Assurance Inspection Services at the November 12, 2008 meeting or at the time of submitting his bid for RFP 09-002. The Administrator's suggestion to the contrary is based on speculation, not fact.

In any event, the only other bidder for RFP 09-002 was Adesta, who had submitted the \$1.3 million bid and therefore, had the same knowledge as AIS at the time of submitting the bids for RFP 09-002. There are any number of reasons to account for the fact that no other vendors submitted bids for RFP 09-002 that are unrelated to Mr. Crandell's involvement in RFP 08-001. First, there appeared to be little interest from the start, as Part II of RFP 08-001 only had two bidders. Second, RFP 09-002 requested substantially less work, making it less attractive for larger vendors who tend to direct their resources towards larger projects. Third, any potential vendors who had received an award for Part I of RFP 08-001 were ineligible to bid RFP 09-002. For these reasons, the Administrator erred in concluding that any knowledge Mr. Crandell had concerning the bids for RFP 08-001 provided a competitive advantage and/or discouraged other potential bidders on RFP 09-002.

c . All Potential Bidders for RFO 09-002 Had The Same Information Regarding the Fiber Plant to Be Inspected.

With respect to this factor, the Administrator again makes broad assumptions without examining the actual circumstances or information provided in the RFPs themselves. Part of the difficulty IRHTP encountered with RFP 08-001 was grouping outside plant fiber installation and quality assurance inspection services into one RFP when the sites and locations had not yet been determined. Therefore, vendors were advised to submit their bids based on the 94 health care

locations that had been approved.³² Network maps were provided showing the potential connections and mileage, yet there were many unknowns.³³ Due to these unknowns and the fact that constant supervision was contemplated, the quality assurance bids for RFP 08-001 were understandably high. By the time RFP 09-002 was posted, many of these unknowns had been eliminated. The fiber optic facilities were limited to 66 locations with 16 additional sites that were already on-net.³⁴ None of this information was unique to AIS. It had the same understanding of IRHTP's fiber plant to be inspected as any other potential bidder on the project. This was an improper reason to conclude that AIS was advantaged over other potential bidders or discourage other prospective bidders.

d. Mr. Crandell Had No Knowledge of IRHTP's Budget At the Time of Submitting a Bid for RFP 09-002.

IRHTP's overall "budget" was public information. IRHTP received a commitment of \$3,316,320.18 per year for 3 years. This represented 85 percent of the total cost.³⁵ Mr. Crandell had no more specific knowledge of IRHTP's budget at the time RFP 08-001 was evaluated other than that \$1.3 million was over-budget as noted by the Steering Committee, of which he was not a part. He did not know what the budget was, how much was remaining, or how much was designated towards Quality Assurance Inspection Services. There is no indication in the record for the Administrator to conclude otherwise.

³² See RFP 08-001 Attachment 4 – Part II.

³³ See RFP 08-001 Annex A.

³⁴ The Administrator makes much of the fact that RFPs 08-001, 09-002, and 12-004 contained similar language for "vendor qualifications," "site inspectors," and "services requested" and that all three RFPs requested inspections services for outside fiber plant for the IRHTP network. See Administrator's Decision at note 27. Respectfully, such similarities are not material to the issue of whether there was an unfair advantage and undoubtedly they all requested inspection services for the outside fiber plant because *that was the service being requested*. Nothing in footnote 27 is indicative of an unfair advantage to Mr. Crandell. Moreover, all previous RFPs were public and available to all potential bidders.

³⁵ See Pilot Program Selection Order at Appendix B.

Moreover, it was no secret that the Quality Assurance RFP had been revised to result in lower bids. After reviewing the million dollar bids submitted for RFP 08-001, IRHTP reviewed its need for Quality Assurance Inspection Services and determined that constant supervision was not necessary. For that reason, it crafted a new RFP (09-002) requesting different services and providing more information regarding the number and location of sites and number of hours required. Both of these factors were expected to bring down the amounts of the proposed bids. Because RFP 09-002 used a completely different formula for submitting bids, any of Mr. Crandell's previous knowledge from his work RFP 08-001 was irrelevant and immaterial to his bid on RFP 09-002. The Administrator erred in concluding Mr. Crandell had knowledge of IRHTP's budget that other potential bidders did not have. Moreover, any such knowledge would have been immaterial to AIS's bid on RFP 09-002 and the ultimate selection of AIS as the provider for Quality Assurance Inspection Services.

e. The General Competitive Bidding and Vendor Selection Processes Were Explicit in the RFP Itself.

Finally, the Administrator alleges that Mr. Crandell's involvement in RFP 08-001 gave him an advantage over other potential bidders because he had knowledge of IRHTP's general competitive bidding and vendor selection processes. Again, this information was not unique to Mr. Crandell. This information, including the evaluation criteria, was specifically listed in the RFP itself. Moreover, because the quality assurance inspection services bids were never evaluated for RFP 08-001, Mr. Crandell had no "inside knowledge" regarding how the Steering Committee would assign points for each factor. The competitive bidding and vendor selection processes were explicitly provided within the RFP itself. The Administrator pointed to no specific aspect of these processes that was known only to Mr. Crandell. This generalized

assumption has no basis in the record, is conclusory, and does not demonstrate a competitive bidding violation occurred.

Overall, the five reasons provided by the Administrator fail to account for the actual circumstances of RFPs 08-001 and 09-002.³⁶ The Administrator essentially concludes that because Mr. Crandell worked on RFP 08-001, then his bidding on RFP 09-002 must be violative of the competitive bidding requirements. This black-and-white approach ignores the actual facts and circumstances as described above. The only information available to Mr. Crandell that was not available to other RFP 09-002 bidders was the amount of the bids for RFP 08-001. As explained above, this information provided no advantage and was immaterial given the different services requested and formula for submitting bids for RFP 09-002. Because the actual circumstances demonstrate that AIS's bids for RFP 09-002 and 12-004 were competitive, the Administrator's decision should be reversed.

2. Mr. Crandell's Work on Other RFPs Did Not Inform His Bid for Quality Assurance Inspection Services on RFP 09-002.

The Administrator notes that Mr. Crandell's work on IRHTP RFPs for outside fiber plant, network and site electronics, broadband lit services, and meshed Ethernet services provided him the alleged advantageous information as described above.³⁷ This statement fails to appreciate the timing of the various RFPs. The only information AIS had access to prior to submitting its bid

³⁶ The only authority the Administrator provides for concluding this conduct violated the competitive bidding requirements is easily distinguished. *See* Administrator's Decision at 6-7, note 30 (describing that the applicant provided the selected service provider with information about the needs of the project and what the selected service provider should include in its bid response). Notably, Mr. Crandell was not the applicant for this project. Moreover, Crandell and Art Spies (the Project Coordinator) never engaged in any discussions regarding what AIS should include in its bid response for RFP 09-002. *See* Affidavit of Tony Crandell at ¶ 27-28.

³⁷ Administrator's Decision at 5.

for RFP 09-002 was from Mr. Crandell's work on RFP 08-001 and 08-002. All other RFPs were drafted and submitted from 2010 through 2012.³⁸

Aside from the timing issue, the Administrator's decision also fails to analyze how knowledge regarding any of the services requested in these subsequent RFPs would have been relevant in submitting a bid for Quality Assurance Inspection Services. As explained above, the scope of RFP 09-002 was limited to the strict formula provided, which required bidders to submit a burdened hourly rate. No other additional information concerning services performed by other vendors would have been relevant or informative to the vendors submitting a bid. Even if it was, the RFP outlined the process for requesting this information from IRHTP.

AIS received no competitive advantage by assisting IRHTP with RFPs for services unrelated to Quality Assurance Inspection Services. The Administrator's conclusion to the contrary is reversible error.

3. USAC Unfairly Punishes AIS For Being a Competitive Bidder.

Finally, USAC takes issue with Mr. Crandell's involvement with the IRHTP because his very association with the project "may have discouraged prospective bidders for the scaled-back inspection services."³⁹ This is pure speculation. It also ignores the numerous other plausible explanations that RFP 09-002 had only two bidders, which are unrelated to Mr. Crandell's work with IRHTP.⁴⁰ The Administrator's decision unfairly assumes that it was Crandell's work on the IRHTP RFPs and not his broad range of experience and expertise that allegedly discouraged

³⁸ See Affidavit of Tony Crandell at ¶ 13 (describing the RFPs he assisted with included RFP 10-001 for Broadband Lit services, RFP 12-004 for Outside Plant Fiber and Network Electronics sections only, and RFP 12-005 for Meshed Ethernet Bandwidth Connectivity).

³⁹ See Administrator's Decision at 6-7.

⁴⁰ See *supra* at 14.

other vendors from submitting bids. The allegation also insinuates that IRHTP could not be trusted to make an objective selection based on the evaluation criteria outlined in the RFP. Essentially, the Administrator jumps to the worst conclusion when AIS and IRHTP are unable to prove a negative.

Without more, this reason provided by the Administrator should not be considered as a basis to find a competitive bidding violation. Mr. Crandell's mere participation in this project and any perceived consequences inappropriately punishes AIS and IRHTP for actions it undertook in good faith and overlooks the reasonable conclusion that Mr. Crandell was simply a competitive bidder. The Administrator has pointed to no authority to the contrary to suggest that a competitive bidding violation has been found under similar circumstances with similar speculation.⁴¹

B. In The Event the Wireline Competition Bureau Finds a Technical Violation of the Competitive Bidding Rules, There Is Good Cause to Grant a Waiver.

As fully described above, the Administrator's decision relied on a limited view of the circumstances of FRNs 41446 and 63145 and broad speculation concerning Mr. Crandell's assistance as a technical resource for IRHTP. Upon a closer look of the circumstances, AIS respectfully submits that a waiver is appropriate should WCB find a technical violation of the competitive bidding requirements. Under 47 C.F.R. § 1.3, these requirements may be waived "for good cause shown." AIS submits good cause exists in this case based on the public interest,

⁴¹ Indeed, the Administrator's citation in support of this reasoning differs drastically from the circumstances in this case. *See* Administrator's Decision at 7, note 31 (understandably finding a competitive bidding violation where the applicant "surrenders control of the bidding process to a service provider that participates in the bidding process..."). Mr. Crandell/AIS had no control over the bidding process for RFP 09-002. The violation described in this footnote would be akin to Mr. Spies (as the contact person for the RFP) participating in the bidding process. That is clearly not what happened and Crandell's involvement in other RFPs was far removed from the RFP he participated in as a bidder.

the good faith actions of IRHTP and AIS, and the unique circumstances of IRHTP's project. Each of these will be discussed in turn.

1. A Waiver Would Promote the Public Interest.

IRHTP's participation in the RHC Pilot Program has been an overall success. "Between 2007-2013, a total of 118 healthcare locations were added to the IRHTP broadband network through the Rural Healthcare Pilot Program."⁴² This means that rural hospitals are better able to provide patient care by allowing them to perform additional functions that require access to a broadband network.

Part of the reason for this success was Mr. Crandell's willingness to serve as a technical resource for IRHTP. Given the limited local resources who could have provided similar assistance, Mr. Crandell's participation was key to the project's success. AIS's bids on the Quality Assurance Inspection Services (perhaps the least important aspect of this project) were made only upon approval of the USAC coach. If AIS had known that its participation in the project as a bidder was going to be challenged, it would have refrained from doing so.

In the context of a Pilot Program, any ambiguities that arise should be interpreted in favor of the participant, especially under circumstances similar to these. IRHTP obtained firsthand guidance and approval from a USAC coach for AIS to bid on RFP 09-002, there are no allegations of fraud or abuse, and the work was appropriately performed and the project completed as intended. By granting a waiver, the public interest would be served by recognizing that ambiguities arising in the course of implementing Pilot Programs will not be construed against participants who otherwise demonstrate good faith compliance with the requirements and successful implementation and execution of the Program's goals.

⁴² See Healthcare, ICN, *available at* <https://icn.iowa.gov/services/healthcare> (last visited Mar. 25, 2016).

2. IRHTP and AIS Acted in Good Faith to Meet the Competitive Bidding Requirements.

At all times in implementing and executing IRHTP's project, IRHTP and AIS took their participation in the RHC Pilot Program seriously. They strived to be meticulous in their processes and compliant with all requirements. Indeed, they finished the project within the projected timeframe and budget.

As noted above, participation in a Pilot Program is not without its difficulties. Criteria 1 through 6 (the Competitive Bidding Rules as articulated by USAC), do not address this situation.⁴³ When faced with an uncertainty, IRHTP turned to its USAC coach for guidance and followed the instructions provided. It implemented appropriate screening procedures related to Mr. Crandell, consistent with Committee members' understanding of competitive bidding requirements based on involvement in other state and local projects. Upon receipt of the bids, it objectively considered the evaluation criteria and assigned points to demonstrate transparency in its decision. These efforts should be taken into account.

It is also noteworthy that beyond cost-effectiveness, one of the main purposes of the competitive bidding requirements and audit process is to prevent waste, fraud, and abuse.⁴⁴ There are no such allegations here. All parties acted in good faith in their respective roles. In the context of a Pilot Program, these good faith actions provide good cause to grant a waiver in such limited scope.

3. The Unique Circumstances of IRHTP's Project.

Mr. Crandell is one of the few individuals in Iowa with a comprehensive understanding of the ICN system based on his work as a Project Manager and eventual Senior Systems Design

⁴³ See *supra*, note 26.

⁴⁴ See Pilot Program Selection Order at ¶ 95.

Engineer for the State of Iowa for 24 years.⁴⁵ Mr. Crandell's technical expertise was crucial to the implementation and execution of the IRHTP project. However, this technical expertise also made AIS a competitive bidder. The most important point to consider is that Mr. Crandell was never on both sides of the same RFP. The Administrator demonstrates little consideration of this fact and finds a violation merely based on Crandell's work as a drafter for one RFP and a bidder for another without considering whether there is an actual relation between the two.

Respectfully, the above discussion of the differences between the two RFPs demonstrates that the goals and purposes of the competitive bidding requirements remained intact with respect to Mr. Crandell's work on the different RFPs. In the event this approach technically violated the competitive bidding requirements, a waiver should be allowed based on the circumstances which demonstrate that the overall purpose of those requirements was achieved and no harm resulted.

VII. CONCLUSION AND REQUEST FOR RELIEF

At most, the circumstances demonstrate an appearance of impropriety. However, a close look at the circumstances surrounding the various RFPs and the content of the RFPs themselves shows that the competitive bidding requirements were met for RFPs 09-002 and 12-004. The Administrator relied on speculation not supported by the record to conclude that AIS's bid in RFPs 09-002 and 12-004 was not competitive. The documents indicate otherwise. For all the above reasons, AIS requests that the Administrator's decision be reversed. In the alternative, AIS requests a waiver of any technical violation of the competitive bidding requirements based on the public interest, the good faith actions of IRHTP and AIS, and the unique circumstances of the project.

⁴⁵ See Affidavit of Tony Crandell at ¶ 5-8.

Respectfully submitted,

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